A former case in a lower New York court, in which a boarding-house keeper claimed a lien on property not owned by a guest, construed the words "property brought by a guest" to include only property belonging to the guest; this rather forced construction being adopted on the ground that to give a boarding-house keeper a larger lien would be unconstitutional, as taking the owner's property without due process of law. *Barnett* v. *Walker*, 39 N. Y. Misc. 323. The present case overrules this construction, holding that the words do confer a lien on the goods of a third person. The court is clearly right in holding that in its application to innkeepers the statute is constitutional, for at common law an innkeeper had a lien on property brought by a guest who had no title to it. *Yorke* v. *Grenaugh*, 2 Ld. Raym. 866; *Jones* v. *Morrill*, 42 Barb. (N. Y) 623. Whether or not the statute, as here construed, is constitutional as far as it applies to boarding-house keepers is left in doubt. It seems, however, well within the legislative power to extend the law in the case of inns to the analogous case of boarding-house keepers. See 16 HARV. L. REV. 528.

LIMITATION OF ACTIONS — NATURE AND CONSTRUCTION OF STATUTE — DISABILITY CAUSED BY INJURY FOR WHICH ACTION IS BROUGHT. — The plaintiff sustained injuries to his head from which insanity almost immediately resulted. The action was brought after the statute of limitations had run. *Held*, that the provision of the statute in regard to disabilities existing at the time the cause of action accrues is applicable, and that the action is not barred. *Nebola* v. *Minnesota Iron Co*, 112 N. W. 880 (Minn.).

It has been held that insanity resulting a few hours after an injury is not a disability existing at the time the right of action accrues within the meaning of a statute of limitations. *Roelefsen* v. *City of Pella*, 121 Ia. 153. The decision in the principal case, however, is supported by an earlier Texas decision. *Sasser* v. *Davis*, 27 Tex. 655. The question involved seems not to have been considered elsewhere. The periods fixed by statutory limitations usually date from the accrual of the action. WOOD, LIMITATIONS, § 54. As a general rule, however, in calculating these periods it is held that the day on which the action accrued is excluded, and that the running of the statute begins on the following day. *Seward* v. *Hayden*, 150 Mass. 158. Hence a disability arising shortly after the action accrues, but on the same day, exists when the statute begins to run, and by similar construction would fill the statutory requirement of "existing at the time the action accrued." This construction seems more just than to hold that insanity caused by an injury and resulting immediately after it is not a disability provided for by the statutes. See *Street Ry. Co.* v. *Mabie*, 66 Ill. App. 235, 239.

LOTTERIES — STATUTES — THE ELEMENT OF CHANCE. — The defendant offered certain rewards or prizes to the persons who should submit the nearest correct estimates of the popular presidential vote of 1904 and who should at the same time subscribe to a certain periodical. The plaintiff was the assignee of the claims of the two most successful contestants. *Held*, that the plaintiff cannot recover, as the enterprise is a lottery. *Waite* v. *Press Publishing Ass'n*, 155 Fed. 58 (C. C. A., Sixth Circ.).

Legislation regulating such transactions is very comprehensive, but the courts generally recognize that to constitute a lottery scheme three elements must concur: a consideration, a prize, and the allotment of the prize by chance. See *Equitable Loan, etc., Co.* v. *Waring*, 117 Ga. 599, 609. A recent English case shows the tendency to a very liberal construction in finding the first named essential, consideration. *Willis* v. *Young*, [1907] 1 K. B. 448. In their interpretation of the third element the English and American decisions are in some conflict on such facts as are presented in the present case. The former hold that the factor of human calculation renders negligible the element of chance. *Hall* v. *Cox*, [1899] 1 Q. B. 198. The weight of American authority, with better reason, it would seem, holds that chance is the dominant factor in arriving at the correct conclusion. *Stevens* v. *Cincinnati Times-Star Co.*, 72 Oh. St. 112; *People* v. *Lavin*, 179 N. Y. 164; *contra*, *U. S.* v. *Rosenblum*, 121 Fed. 180. That a competitor's ignorance of any of the causes which will

determine the exact result desired must leave the correctness of his estimate dependent, in the last analysis, on chance, seems too clear for argument.

MALICIOUS PROSECUTION — PROBABLE CAUSE — BONA FIDE MISTAKE OF LAW. — A tenant tore down the "To Rent" sign which her landlord's agent had hung in her window. The agent, an attorney, unsuccessfully prosecuted her under a statute which made criminal the severance of fruits, crops, etc., "or anything," from the freehold. *Held*, that the agent had probable cause for the prosecution. *Whipple* v. *Gorsuch*, 101 S. W. 735 (Ark.).

The plaintiff, through the false representation that he was a Roman Catholic priest collecting funds for the building of a Roman Catholic church, obtained money wherewith he built an Old Catholic church. The defendant unsuccessfully prosecuted him for obtaining money by false pretenses. *Held*, that the defendant had no probable cause for the prosecution. *Urban* v. *Tyszka*, 64 Leg. Int. 411 (Pa., Washington Co. C. P., April 23, 1907).

The question of probable cause depends largely upon the particular facts of each action for malicious prosecution; it is dangerous to generalize as to what a man of reasonable prudence and caution would or would not do. Some dicta suggest that he would never make a mistake of law. See *Hazzard* v. *Flury*, 120 N. Y. 223; *Hall* v. *Hawkins*, 24 Tenn. 357. In most of such cases the defendant had prosecuted the plaintiff for larceny of goods taken under a claim of right, or the defendant's belief in the plaintiff's guilt arose from some similar gross mistake of law. Where, however, the defendant misapprehended a doubtful point of law, he may still be considered to have acted with reasonable prudence and hence with probable cause. *Phillips* v. *Naylor*, 4 H. & N. 565. This view seems correct logically, and as a matter of public policy. Both the present decisions appear doubtful in the light of the facts, but the Arkansas holding illustrates the more commendable tendency. It cannot be said that he who institutes a prosecution is always bound at his peril, if a layman, to consult an attorney, if a lawyer, to know the law.

MUNICIPAL CORPORATIONS — MUNICIPAL DEBTS AND CONTRACTS — MORTGAGE OF STREET RAILWAYS PAYABLE FROM THEIR INCOME CONSTITUTING DEBT. — The Illinois constitution limits city indebtedness. In purchasing street railways Chicago issued $75,000,000 of certificates payable solely from the income of the railways, and secured by a mortgage of the railway property, the purchaser at foreclosure being given the right to operate the railways for twenty years. *Held*, that this issue of certificates constitutes a debt within the constitutional provision. *Lobdell* v. *Chicago*, 227 Ill. 218.

The policy underlying limitations on indebtedness is that future taxpayers shall not be unduly burdened. See 16 HARV. L. REV. 442. A loan secured by a purchase-money mortgage does not constitute a debt to which the limitation applies. *Winston* v. *Spokane*, 12 Wash. 524. But it has been held that hypothecation of stock creates a debt, although the pledgee has no recourse against the city. *Mayor* v. *Gill*, 31 Md. 375. That case differs from the present, for it appears that the city there contemplated "returning" the money from its general funds. Further, a loan, to be repaid solely from the income of existing waterworks, and secured by a mortgage on the waterworks, has been held a debt. *City of Joliet* v. *Alexander*, 194 Ill. 457. This decision, however, has been questioned. See 34 Nat. Corp. Rep. 325. And the present case goes much further, since the threatened increase, if any, in taxation seems very remote. The city has executed a purchase-money mortgage which admittedly creates no debt; in addition it has granted a franchise contingently which it had the right to grant absolutely and gratuitously. *Roby* v. *Chicago*, 215 Ill. 604. The transaction, therefore, seems to throw no additional burden on the taxpayers, and consequently should not be considered a debt prohibited by the constitution.

MUNICIPAL CORPORATIONS — TERRITORIAL LIMITS AND SUBDIVISIONS — GRANTING MUNICIPALITY POWER OUTSIDE ITS CORPORATE LIMITS. — The state legislature granted to the city of Memphis general police power for the purposes of sanitation and health ten miles beyond the city limits, and complete